

ZONING BOARD OF APPEALS

The hearing on Tuesday, March 5, 2024, is called to order by Chairman Kalinowski at 7:00 pm.

Members present: John Jimenez
Greg Kalinowski
Ron Carey
Jim Lembke
Shawn Pralow

Also: Phyllis Todoro, Town Atty
Joe Colern, Building Insp
Robert Schafer, Alternate

Absent: Harry Kwiek

Appeals Case #1449 for Leon Berner for the property located at 850 Maple Rd, Elma, NY who is requesting an area variance to build a shade structure with less than the required front setback §144-99 C4, Residential and C-3.

Leon was present and explained what he was looking to do.

Mr. Jimenez asked about the greenhouse being less than 50 feet close to the road. Leon said the property line is at an angle, moving the entrance further from Maple Road. Mr. Jimenez asked about the car park, and it will be moved back. Mr. Carey asked if he would consider a smaller shade structure, Leon said it is only one post that will be closer. Mr. Carey asked if it could be stopped at the doorway and Leon said it would have to be 20 feet section and trying to keep it the same distance as the building. Mr. Pralow asked if it was attached, and spiked into the blacktop was the answer.

No one spoke in favor.

Against: Beverly 2020 West Blood Road

Mr. Jimenez made a motion to approve Appeals Case #1449 for Leon Berner for the property located at 850 Maple Rd, Elma, NY who is requesting an area variance to build a shade structure with less than the required front setback §144-99 C4, Residential and C-3, based on the following criteria:

1. An undesirable change would not be known.
2. The benefit could not be achieved another way.
3. The request is not substantial.
4. The request would not have an adverse physical or environmental effect.
5. The alleged difficulty is not self-created.

Second Mr. Lembke. Ayes: 4 Nays: 1 (Mr. Carey)

Appeals Case #1450 for Fred Donato for the property located on Carol Lane, Elma, NY who is requesting an area variance to create six equal building lots §144-99 C2; §144-131; §100-3 and §100-1A Residential C.

Mr. Jeff Palumbo, an attorney representing Fred Donato, was present.

Mr. Palumbo stated that the amended application is for 6 lots. Mr. Palumbo stated that the property measures over 6 acres, and that if you read the code for Residential C it falls within that code. It does not meet the 250 depth, the number of splits, or the two acres required. The land would be divided into 6 lots, and there would be no detriment to health and safety and welfare. The detriment to the size of lots is nothing when the lots across the street are small lots already. The variance cannot be achieved any other way, they tried to acquire other land but there is no other land because of the price that can be added. Mr. Palumbo stated that the condition regarding whether the request is substantial. Mr. Palumbo stated that the courts look at whether the impact of the variance is substantial. Another factor to be considered is if it is self-created. The dimensions of the land area are not sufficient, so the difficulty already exists, someone else created the difficulty. Another condition is if there is an adverse impact on the neighborhood. Every time a house is built there is an impact on the neighborhood when the land is cleared.

Mr. Carey asked Mr. Palumbo if he completed the application for the appeal and his reply was that his office had filled out the application. Mr. Carey also asked Mr. Palumbo if the applicant owns the land, and he does not. Mr. Snyder currently still owns it. Mr. Carey asked if there is a contract for sale if the variance is granted and Mr. Palumbo was not sure he thought maybe the last six months it was signed or dated. Mr. Carey asked if Mr. Palumbo was aware that there was a prior denial for this same case before the board and Mr. Palumbo stated he knew due to the minutes but was not present for that hearing. Mr. Carey asked if Mr. Donato was aware of the prior case when he entered into the contract and Mr. Palumbo said he was not aware if Mr. Donato knew when he entered into the contract, but Mr. Donato became aware when Mr. Palumbo told him. Mr. Carey asked if he was aware that in the minutes of April 2019 that Mr. Snyder told the board that he knew the land could not be built on when he purchased it. Mr. Palumbo replied that he saw that in the minutes and Mr. Carey commented that it has not changed. Mr. Palumbo stated he does not know the relevance of that, and Mr. Carey stated he purchased the land knowing that he could not get a building permit without a variance and that is the relevance. Mr. Palumbo said that is correct but that is only one factor that goes to the issue of whether it is self-created. Mr. Carey asked if any additional attempts were made to purchase additional land so that he would have enough land to qualify, and Mr. Palumbo said he knew attempts were made but did not know how many attempts and when. Mr. Carey asked about the type of homes and if they are single-family owner-occupied homes and Mr. Palumbo said Mr. Donato has not made a decision. Mr. Palumbo mentioned the ordinance allows one- or two-family homes to be built. Mr. Carey mentioned that would go against the character of the neighborhood and Mr. Palumbo stated the master plan says one- or two-family homes. Mr. Carey asked what the style or size of homes are planning to be built and Mr. Palumbo said there are homes that are across the street that look to be duplexes and they would be similar to those. Mr. Carey asked when that decision would be made if he is building duplexes or single-family homes. Mr. Palumbo said it would be market driven and that again how is that relevant to the issue of the variance. Mr. Carey said it would go to the character of the neighborhood and Mr. Palumbo said that was correct and that it allows one- or two-family homes to be built. Mr. Kalinowski said the zoning board can stipulate that it will only allow single family homes and Mr. Palumbo said the zoning board does not have that capability.

Mr. Carey asked what is being planned to be built and Mr. Palumbo stated he answered the question twice now. Mr. Carey said he referred to the residential C code which requires 250 feet of depth, under the 4-split rule. Code section 100-3 requires there to be 350 feet of depth and Mr. Palumbo said he mentioned that already. Mr. Carey said in comparing the lots on the new side of Carol Lane they would need 350 feet. The homes on the west side are 220 feet because it was approved as a subdivision and Mr. Palumbo stated that is why they are asking for the variance. Mr. Carey stated that what they are asking for does not qualify under the 4-split rule. Mr. Carey asked who completed the EAF map and if it came from the DEC and that the queen snake is mentioned and if this land is historical or archeological property and if Mr. Palumbo could comment on that. Mr. Palumbo said he does not have any information and that it was recently brought to his attention.

Mr. Pralow asked if Mr. Donato was to go through with the purchase what the contract price of the land was and Mr. Palumbo said he had the contract with him and upon looking he did not have it. Mr. Pralow stated that Mr. Palumbo mentioned that buying additional land was cost prohibited and the reply was that is correct. Mr. Pralow said it is fair to say the contract price that Mr. Donato would be paying is below market value for Elma and Mr. Palumbo said he does not know due to not knowing the contract price. Mr. Carey asked if Mr. Palumbo is aware of a theory in zoning law called second application doctrine and Mr. Palumbo said he has never heard of that. Mr. Carey did some reading and under a second application doctrine you have to show once a variance has been denied, as it was five years ago, that what is being proposed now must be materially and substantially different from what was proposed and rejected last time around. Mr. Snyder was the owner back then and still is the owner now and that the codes have not changed and the only thing that has changed on the application is that it went from proposed three lots to six lots and Mr. Carey doesn't see anything that has changed materially or substantially besides the number of lots. Mr. Palumbo is not sure where the theory is

from and unless it is modified in the town ordinance there is no such thing, so if there is a section in the town ordinance on second applications it has to be material or substantially different. Mr. Palumbo said doubling the number of lots is not significantly different. Mr. Carey replied that it is his position that it's doubling the hazards.

No one spoke in favor of the variance.

Against the variance from Carol Lane was:

Ruth Bleckinger	50 Carol Lane
Allen Berger	110 Carol Lane
Regina Fantozzi	120 Carol Lane
Will Parker	155 Carol Lane
Amanda Queeno	150 Carol Lane
Kevin Gefert	40 Carol Lane
Jamie Mecca	60 Carol Lane
Loan Lock	70 Carol Lane
<u>Midway:</u>	
Joseph Cukierski	30 Midway
Larry Osika	10 Midway
<u>Clinton Heights:</u>	
Carol Kloc	150 Clinton Heights
Margaret Reynolds	31 Clinton Heights
Linda Nowicki	81 Clinton Heights
<u>Other Streets:</u>	
Doug Huber	7011 Clinton Street
Roger Batt	6951 Clinton Street
Cheryl Batt	6951 Clinton Street
Dennis Judware	6991 Clinton Street

Mr. Palumbo addressed the septic issue, and there is plenty of room on the one acre lots. Mr. Palumbo addressed the issue of duplexes, and he has no idea what is going to be built, it does not matter the law allows either a single or duplex home. The view of the land is not an issue, if the residents on Carol Lane wanted the view left, they could have purchased the property themselves. Mr. Palumbo stated that the drainage has to be addressed by the town building inspector and the engineer when something is going to be built. Mr. Kalinowski asked about the six lots and is the plan or intent to develop a lot a year. Mr. Palumbo said, as the market dictates, is how he plans to develop them. Mr. Kalinowski mentioned it is beyond the 4-split rule, you cannot develop more than one lot a year. Our code beyond the 4-split rule allowing for one lot a year section 100-3 and 100-1A. In the application paperwork on the GPI Engineering Survey dated February 5, 2024, it is noted as a proposed 6 lot subdivision and that has to be approved by the planning and the town boards. Under the town code a major subdivision cannot be put in a residential C zone. The property has to be divided to convey lots according to Mr. Palumbo and a subdivision map has to be filed. Mr. Colern mentioned that in the 60's that was an approved subdivision and it is on map cover 2302, 2265 and 1975, it was filed back in the 60's and was allowed then, the code has changed since then.

Mr. Carey made the motion to deny (also denied in 2019 and denied in the 1970s) appeals case #1450 for Fred Donato for the property located on Carol Lane, Elma, NY who is requesting an area variance to create six equal building lots §144-99 C2; §144-131; §100-3 and §100-1A, Residential C based on the following criteria:

1. The fact of going from 3 to 6 lots increases the potential hazards.
2. The application fails to meet the lot standards for the depth and the 4-split rule.
3. There are physical changes to the natural habitat and water issues as indicated on the DEC EAF mapper.
4. There is potential for an undesirable change from the single-family character of the neighborhood due to not knowing the style of house that is to be built. If in fact the plan is to build rental properties and or duplexes, this would be in contrast to existing homes and transient as compared to single family existing homes.
5. This is self-created in that Mr. Snyder admitted that he knew it was not buildable when he purchased the property.

6. This is a substantial change because a major subdivision is not allowed in Residential C. A 6-lot development is considered a major subdivision and this request amounts to Spot Zoning.
7. Under the balancing test, it is clear that Mr. Donato and Mr. Snyder can both make money. Weighing this against the health and safety of the public may be difficult to quantify but additional traffic with increase in population...means more people, more cars, more exposures?

Welfare is defined: “good fortune”, “happiness”, “well-being”, “state of doing well”.

These all add up to Character of Neighborhood. Note Negative feelings of immediate neighbors...not in their best interests or welfare.

The Interests of dozens of homeowners is greater than one developer and one landowner, who knew of code at time of purchase.

Relative to welfare, the neighbors do not think it is in their best interest/well-being; the balancing test factors weigh in favor of the neighbors and against the variance.

Second: Mr. Pralow Ayes – 5. Nays: 0.

Appeals Case 1451 for Todd Huber of 1650 Seneca Street, Elma, NY who is requesting an area variance to install exterior signage on the building §144-79 E6, 7 and 8, C-1.

Todd was present to convey the traffic flow for the Italian Restaurant going into the site, the sign will over the top of the entrance door. The second door is $\frac{3}{4}$ of the way back from the restaurant. The square feet of all the signs exceed the allowed amount.

Mr. Kalinowski said if one sign was not there would it be that bad, Todd said it differs. Mr. Kalinowski asked about the sign that is going to be on the front, is it going to be visible? Mr. Carey said if the sign was on the side, why would it be necessary on the front of the building? Mr. Carey asked if the Merry Mart sign was staying and the post office sign as well.

32 x 5 = 13.3 square feet would be one sign

3 x 5 = Grocery and Deli

1 x 8 Merry Mart sign

All the signs would add up to over 60 feet and it is substantial.

Mr. Carey said all the signs except for the Merry Mart sign would be beneficial, does not see what the importance of that sign could be. Mr. Jimenez asked if that sign could be converted from the Merry Mart to the Italian restaurant and Mr. Huber would prefer not. Mr. Jimenez suggested that the Merry Mart sign stay and not the sign on the front of the building.

Mr. Pralow was not aware that he was looking to keep the Merry Mart sign on the application. The fact that it is almost double what he is asking. Todd said he did not intend to have the measurements for all the signs. Mr. Carey said he was under the same impression as them saying. Todd said the takeout is critical. Mr. Carey said the sign calls for 20 feet, not 60 feet (3x more).

Mr. Colern brought up that the two signs are non-conforming, existing signs. Mr. Carey asked about the sign being higher than the building. Mr. Kalinowski said the arrow is hard to see where it is pointing, and Todd agreed. Mr. Kalinowski said he still feels the Merry Mart sign has no purpose and needs to go. Todd bought the building and cleaned it up, the signs that are on the building will serve a purpose.

For the variance was: Linda 81 Clinton Heights

No one spoke against the variance.

Mr. Jimenez asked how long the sign was up and the reply was in the 40s. Mr. Carey said he was in favor but does not understand how that sign will help. Mr. Colern said as long as the sign stays the same size, it would be nonconforming.

Mr. Pralow made the motion to approve Appeals Case 1451 for Todd Huber of 1650 Seneca Street, Elma, NY who is requesting an area variance to install exterior signage on the building §144-79 E6, 7 and 8, C-1, based on the following criteria:

1. An undesirable change would not be known.
2. The benefit could not be achieved another way.
3. The request is not substantial.
4. The request would not have an adverse physical or environmental effect.
5. The alleged difficulty is not self-created.

Second: Mr. Jimenez Ayes: 3 Nays: 2 (Mr. Carey and Mr. Kalinowski)

Motion to adjourn by Mr. Jiminez and seconded by Mr. Kalinowski. All in favor.

Respectfully submitted,

Kerry Galuski
Zoning Board Secretary